

Department of State

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such as an increased mean time between failure (MTBF).

(4) Supporting technical data must be unclassified and must not include software documentation on the design or details of the computer software, software source code, design methodology, engineering analysis or manufacturing know-how such as that described in paragraphs (c)(4)(i) through (c)(4)(iii) as follows:

(i) *Design Methodology*, such as: The underlying engineering methods and design philosophy utilized (*i.e.*, the “why” or information that explains the rationale for particular design decision, engineering feature, or performance requirement); engineering experience (*e.g.* lessons learned); and the rationale and associated databases (*e.g.* design allowables, factors of safety, component life predictions, failure analysis criteria) that establish the operational requirements (*e.g.*, performance, mechanical, electrical, electronic, reliability and maintainability) of a defense article.

(ii) *Engineering Analysis*, such as: Analytical methods and tools used to design or evaluate a defense article’s performance against the operational requirements. Analytical methods and tools include the development and/or use of mockups, computer models and simulations, and test facilities.

(iii) *Manufacturing Know-how*, such as: Information that provides detailed manufacturing processes and techniques needed to translate a detailed design into a qualified, finished defense article.

(5) This defense service exemption does not apply to maintenance training or the performance of maintenance and service or the transfer of supporting technical data for the following defense articles:

(i) All Missile Technology Control Regime Annex Items;

(ii) Firearms listed in Category I; and ammunition listed in Category III for the firearms in Category I;

(iii) Nuclear weapons strategic delivery systems and all components, parts, accessories and attachments specifically designed for such systems and associated equipment;

(iv) Naval nuclear propulsion equipment listed in Category VI(e);

(v) Gas turbine engine hot sections covered by Categories VI(f) and VIII(b);

(vi) Category VIII(f);

(vii) Category XII(c);

(viii) Chemical agents listed in Category XIV (a), biological agents in Category XIV (b), and equipment listed in Category XIV (c) for dissemination of the chemical agents and biological agents listed in Categories XIV (a) and (b);

(ix) Nuclear radiation measuring devices manufactured to military specifications listed in Category XIV(d);

(x) Category XV;

(xi) Nuclear weapons design and test equipment listed in Category XVI;

(xii) Submersible and oceanographic vessels and related articles listed in Category XX(a) through (d);

(xiii) Miscellaneous articles covered by Category XXI.

(6) *Eligibility criteria for foreign persons.* Foreign persons eligible to receive technical data or maintenance training under this exemption are limited to nationals of the NATO countries, Australia, Japan, or Sweden.

[58 FR 39305, July 22, 1993, as amended at 65 FR 45283, July 21, 2000; 66 FR 35899, July 10, 2001]

§ 124.3 Exports of technical data in furtherance of an agreement.

(a) *Unclassified technical data.* District Directors of Customs or postal authorities shall permit the export without a license of unclassified technical data if the export is in furtherance of a manufacturing license or technical assistance agreement which has been approved in writing by the Office of Defense Trade Controls and the technical data being exported does not exceed the scope or limitations of the relevant agreement. The U.S. party to the agreement must certify on the Shippers Export Declaration that the export does not exceed the scope of the agreement and any limitations imposed pursuant to this part. The approval of the Office of Defense Trade Controls must be obtained for the export of any unclassified technical data which may exceed the terms of the agreement.

(b) *Classified technical data.* The export of classified information in furtherance of an approved manufacturing

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license or technical assistance agreement which provides for the transmittal of classified information does not require further approval from the Office of Defense Trade Controls when:

(1) The United States party certifies to the Department of Defense transmittal authority that the classified information does not exceed the technical or product limitations in the agreement; and

(2) The U.S. party complies with the requirements of the Department of Defense Industrial Security Manual concerning the transmission of classified information and any other requirements of cognizant U.S. departments or agencies.

§ 124.4 Deposit of signed agreements with the Office of Defense Trade Controls.

(a) The United States party to a manufacturing license or a technical assistance agreement must file one copy of the concluded agreement with the Office of Defense Trade Controls not later than 30 days after it enters into force. If the agreement is not concluded within one year of the date of approval, the Office of Defense Trade Controls must be notified in writing and be kept informed of the status of the agreement until the requirements of this paragraph or the requirements of § 124.5 are satisfied.

(b) In the case of concluded agreements involving coproduction or licensed production outside of the United States of defense articles of United States origin, a written statement must accompany filing of the concluded agreement with the Office of Defense Trade Controls, which shall include:

(1) The identity of the foreign countries, international organization, or foreign firms involved;

(2) A description and the estimated value of the articles authorized to be produced, and an estimate of the quantity of the articles authorized to be produced;

(3) A description of any restrictions on third-party transfers of the foreign-manufactured articles; and

(4) If any such agreement does not provide for United States access to and verification of quantities of articles

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produced overseas and their disposition in the foreign country, a description of alternative measures and controls to ensure compliance with restrictions in the agreement on production quantities and third-party transfers.

[62 FR 67276, Dec. 24, 1997]

§ 124.5 Proposed agreements that are not concluded.

The United States party to any proposed manufacturing license agreement or technical assistance agreement must inform the Office of Defense Trade Controls if a decision is made not to conclude the agreement. The information must be provided within 60 days of the date of the decision. These requirements apply only if the approval of the Office of Defense Trade Controls was obtained for the agreement to be concluded (with or without any provisos).

§ 124.6 Termination of manufacturing license agreements and technical assistance agreements.

The U. S. party to a manufacturing license or a technical assistance agreement must inform the Office of Defense Trade Controls in writing of the impending termination of the agreement not less than 30 days prior to the expiration date of such agreement.

§ 124.7 Information required in all manufacturing license agreements and technical assistance agreements.

The following information must be included in all proposed manufacturing license agreements and technical assistance agreements. The information should be provided in terms which are as precise as possible. If the applicant believes that a clause or that required information is not relevant or necessary, the applicant may request the omission of the clause or information. The transmittal letter accompanying the agreement must state the reasons for any proposed variation in the clauses or required information.

(1) The agreement must describe the defense article to be manufactured and all defense articles to be exported, including any test and support equipment or advanced materials. They